

EXHIBIT A

**FILED UNDER SEAL
PURSUANT TO THE
PROTECTIVE ORDER**

EXHIBIT B

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,)
Plaintiff,)
vs.) No. CV 10-03561
GOOGLE, INC.,)
Defendant.)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Videotaped Deposition of Andrew Rubin, taken at
633 Battery Street, San Francisco, California,
commencing at 9:39 a.m., Friday, April 27, 2012,
before Ashley Soevyn, CSR 12019.

Reported by:
Ashley Soevyn, CSR. 12019
Job No. 143660
PAGES 1 - 80

Page 2

1 APPEARANCES OF COUNSEL:

2
3 FOR THE PLAINTIFF ORACLE AMERICA, INC.:

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12 FOR THE DEFENDANT GOOGLE, INC.:

13
14 KING & SPALDING
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21 ALSO PRESENT:

22 AARON WATLEY, Videographer
23 SUSAN KIM, Google Litigation Department
24 RACHEL CALFLIN, Legal Assistant King & Spalding
25

Page 3

1 Friday, April 27, 2012; San Francisco, California

2 ---000---

3 THE VIDEOGRAPHER: Good morning. We are on
4 the record. The time is 9:39 a.m. on April 27th, 09:39:28
5 2012. This is the video-recorded deposition of
6 Andrew Rubin. My name is Aaron Watley here with our
7 court reporter Ashley Soevyn. We are here from
8 Veritext National Deposition & Litigation Services
9 at the request of counsel for plaintiff.

10 This deposition is being held at 710
11 Sansome Street, San Francisco, California. Caption
12 of this case is Oracle America, Inc., versus Google, 09:39:57
13 Inc.

14 Please note that audio and video recording
15 will be taking place unless all parties have agreed
16 to go off the record. Microphones are sensitive and
17 may pick up whispers, private conversations, and
18 cellular interference. At this time, will counsel
19 and all present please identify themselves for the
20 record.

21 MS. RUTHERFORD: Alanna Rutherford, Boies,
22 Schiller & Flexner for Oracle America.

23 MR. WEINGAERTNER: Scott Weingaertner of
24 King & Spalding for Google.

25 THE VIDEOGRAPHER: Thank you. The witness

Page 4

1 can be sworn in and we can proceed.

2 ANDREW RUBIN,

3 the witness, having been duly sworn, testified as
4 follows:

5
6 EXAMINATION

7 BY MS. RUTHERFORD:

8 Q. Good morning, Mr. Rubin.

9 A. Good morning.

10 Q. Could you just state your name and title
11 again for the record?

12 A. Sure. Andrew Rubin. I am SVP of mobile
13 for Google.

14 Q. Thank you. When were you contacted by
15 Dr. Cox to assist him in his report
16 reinvestigations?

17 A. Allan Cox and I had a brief conversation on 09:40:57
18 the phone probably about four, five days ago.

19 Q. How long was that brief conversation?

20 A. Probably less than 30 minutes.

21 Q. Who else was on the line?

22 A. There were other people, but I didn't -- I
23 didn't catch their names.

24 Q. Do you know why you were contacted by
25 Dr. Cox?

Page 5

1 A. I was there to, you know, answer his 09:41:30
 2 questions and make sure that he was well-informed
 3 about how we manage our costs on Android.
 4 Q. Did you do anything to prepare for that
 5 phone call?
 6 A. Nothing other than refer to a spreadsheet,
 7 Excel, on the exhibit.
 8 Q. You are pointing to the document in front
 9 of you?
 10 A. Yeah, I haven't reviewed this document, but
 11 I have a P&L that we shared with him. And we both 09:41:58
 12 had that on each side of the phone call.
 13 Q. Was there any follow up after that phone
 14 call?
 15 A. No.
 16 Q. So you were not contacted again in any
 17 way?
 18 A. No.
 19 Q. Did you have any discussions with anybody
 20 prior to your conversation with Dr. Cox to prepare
 21 for that conversation?
 22 MR. WEINGAERTNER: Going to object and
 23 instruct the witness not to answer questions
 24 regarding communications with counsel. 09:42:29
 25 BY MS. RUTHERFORD:

Page 6

1 Q. Did you have any conversations with anybody
 2 aside from counsel --
 3 A. No --
 4 Q. -- in preparation for that call?
 5 A. -- I didn't.
 6 Q. Have you reviewed Dr. Cox's report?
 7 A. I have not.
 8 Q. Were you told why you were meeting with
 9 Dr. Cox, aside from any conversations you had with
 10 counsel?
 11 A. Yes, to, you know, to document the cost
 12 associated with developing Android.
 13 Q. Do you know Android senior financial Aditya 09:42:59
 14 Agarwal?
 15 A. Yes, I do.
 16 Q. Do you work with him on a regular basis?
 17 A. Yes.
 18 Q. Do you believe that you're more fully able
 19 to respond to the questions about Android's expenses
 20 than Mr. Agarwal?
 21 MR. WEINGAERTNER: Objection, form.
 22 THE WITNESS: In certain areas. My -- my
 23 expertise is in the cost to develop Android, his
 24 expertise is in finance and accounting. 09:43:25
 25 BY MS. RUTHERFORD:

Page 7

1 Q. What accounting system is used to keep
 2 track of Android expenses?
 3 A. I don't know.
 4 Q. Do you use SAP, for example?
 5 A. I don't know.
 6 MR. WEINGAERTNER: Objection to form.
 7 BY MS. RUTHERFORD:
 8 Q. Who are the members of Android's accounting
 9 team?
 10 MR. WEINGAERTNER: I'm going to refer
 11 counsel to the order that the Court issued, which
 12 basically imposed an instruction that the deposition 09:43:57
 13 is going to be limited to the subject of the
 14 interviews and information provided to the expert
 15 and its accuracy.
 16 MS. RUTHERFORD: My understanding is
 17 Mr. Rubin's just testified that he relied on the
 18 spreadsheet. Let me ask it this way.
 19 BY MS. RUTHERFORD:
 20 Q. Who prepared the spreadsheet that you used
 21 to -- that you -- strike that.
 22 Who prepared the spreadsheets that you
 23 discussed with Mr. Cox?
 24 A. I don't know.
 25 Q. You don't know? You just received them?

Page 8

1 A. That's right.
 2 Q. Who did you receive the spreadsheets 09:44:29
 3 from?
 4 A. My attorneys.
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 9

Q. You keep pointing to that exhibit, so let's just introduce it.

(Exhibit TX1079 marked for identification.)

BY MS. RUTHERFORD:

Q. All right. You have before you Exhibit 1079. Would you just verify that that's the spreadsheet that you've been discussing that you reviewed with Dr. Cox? 09:45:29

A. This is -- well, let's see. There is many pages here and I think there's actually different spreadsheets here. So let's review it for a second.

Q. Okay. 09:45:59

A. It's an "I" chart. This is -- I mean, it seems to be kind of some of the same data, but it's not in the exact form, probably just because of the way it was printed. For example, my spreadsheet had the names of tabs for one of these reports, and this 09:46:27 doesn't have it.

Q. You were looking at that spreadsheet on a computer; is that correct?

Page 11

Page 10

MR. WEINGAERTNER: Objection to form.

THE WITNESS: I looked at a version of this spreadsheet that was projected on the screen from a computer because the numbers are really small. And, um, I'm trying to figure out if this is just one 09:46:50 spreadsheet or more than one spreadsheet. I don't -- I don't know if this is the identical document that I reviewed. I guess that's my conclusion.

MS. RUTHERFORD: Okay. Counsel, if it's not the identical document, we ask that you produce that.

MR. WEINGAERTNER: We believe it's the identical document.

THE REPORTER: I'm sorry, I kind of couldn't hear you.

MR. WEINGAERTNER: We believe it's the identical document.

BY MS. RUTHERFORD:

Page 12

Q. Could you explain what the accounting system is?

MR. WEINGAERTNER: Objection, form.

THE WITNESS: I don't have -- I'm not an accountant, so I don't have the depth of detail on what the accounting system is. We discussed 09:49:58 earlier, I don't know the name of the accounting system or software they use.

BY MS. RUTHERFORD:

Q. Do you know the methodology?

A. I -- as I understand it, it's standard accounting procedures.

Q. Google doesn't have its own procedures for how it divides, for example, overhead?

MR. WEINGAERTNER: Objection, form.

THE WITNESS: I don't know.

Page 13

1 BY MS. RUTHERFORD:

2 Q. You don't know.

Page 15

13 BY MS. RUTHERFORD:

14 Q. Okay. You mentioned in your trial 09:53:57
15 testimony that Android purchased a small company
16 called Visual Design. Would you amortize the cost
17 of that acquisition?

18 MR. WEINGAERTNER: I'm going to object to
19 the extent that that exceeds the Judge's order,
20 which limits the questioning to the intervenors, the
21 information provided to the expert, its accuracy.
22 To the extent the question goes beyond that, I
23 instruct you not to answer.

24 THE WITNESS: I'm not familiar with that
25 company.

Page 14

Page 16

1 MS. RUTHERFORD: I thought you mentioned it
2 in your trial testimony, Visual Design, no? 09:54:28

3 A. I know they bought a company called Visual
4 Design.

5 Q. Okay. Well, we heard during trial that you
6 hired Noser to work on behalf of Android?

7 A. Yes.

Page 21

Page 23

1 project and was free for use.

[REDACTED]

25 Q. And because you made a distinction, Android

Page 22

Page 24

1 generates revenue through advertising business,
2 correct?

3 MR. WEINGAERTNER: Objection to form.

4 THE WITNESS: Android contributes to 10:00:59
5 advertising revenue.

6 BY MS. RUTHERFORD:

[REDACTED]

11 MR. WEINGAERTNER: Objection to the form of
12 the question and to the extent it calls for
13 testimony outside of the discussion with Dr. Cox or
14 the accuracy of the numbers in the exhibit.

[REDACTED]

18 MR. WEINGAERTNER: Well, let's not be
19 argumentative. I'm just -- 10:01:30

20 MS. RUTHERFORD: All right.

21 MR. WEINGAERTNER: -- making an objection
22 for the record, Counsel.

23 MS. RUTHERFORD: Okay. Thank you.

[REDACTED]

Page 29

1 correctly, so I'll move on to a new one and I'll
2 come back to that one. If you can turn to the last
3 page of Exhibit 1079.

4 A. Okay. 10:10:25

Page 31

Page 30

Page 32

Page 49

Page 51

Page 50

Page 52

Page 53

Page 55

Page 54

Page 56

Page 61

5 MS. RUTHERFORD: You can take your break.

6 MR. WEINGAERTNER: Thank you.

7 THE VIDEOGRAPHER: The time is 10:46 a.m.

8 We are off the record. 10:46:36

9 (Recess taken.)

10 THE VIDEOGRAPHER: The time is 11:05 a.m.

11 We are back on the record.

12 BY MS. RUTHERFORD:

Page 63

Page 62

Page 64

17 BY MS. RUTHERFORD:

18 Q. Okay. Turning to -- again, to the second
19 page, which is ending in Bates number 804 in Exhibit
20 1079.

21 A. Yes. 11:09:28

22 Q. Could you explain to me what this page
23 is?

24 A. I'm sorry, Exhibit 8 -- exhibit ending in
25 804?

Page 73

Page 75

Page 74

Page 76

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MS. RUTHERFORD: Okay. Thank you.
THE VIDEOGRAPHER: This concludes today's
deposition and tape one of the deposition of Andrew
Rubin. We are off the record at 11:24 a.m.